LIBRARY
SUPREME COURT U. S.

No. 1048

FILED
MAR 26 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

ILLINOIS CENTRAL RAILROAD COMPANY, Et Al.,
Appellants,

v.

CITY OF CHICAGO, Et Al.,
Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF FOR APPELLANTS IN OPPOSITION TO MOTION TO AFFIRM

JOHN W. ADAMS
104 St. Francis Street
Mobile, Alabama 36602
WILLIAM J. O'BRIEN, JR.
JOHN H. DOERINGER
135 E. Eleventh Place
Chicago, Illinois 60605
JAMES H. DURKIN
646 Chicago Road
Chicago Heights, Illinois 60411
CARL B. STERZING, JR.
8 N. Jefferson Street
Roanoke, Virginia 24011
Attorneys for Appellants Illinois Central Railroad Company, et al.
FRANKLIN C. GAGEN
110 North Wacker Drive
Chicago, Illinois 60606
BRYCE L. HAMILTON
1400 First National Bank Bldg.
Chicago, Illinois 60603
Attorneys for Appellants Allied Mills, Inc., et al.
LOUIS A. SCHWARTZ
2926 International Trade Mart
No. 2 Canal Street
New Orleans, Louisiana 70130
Attorney for Appellant New Orleans Traffic and Transportation Bureau

Of Counsel:
WINSTON, STRAWN, SMITH & PATTERSON
1400 First National Bank Bldg.
Chicago, Illinois 60603

La Salle Street Press—Chicago 60610

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968.

No. 1048

ILLINOIS CENTRAL RAILROAD COMPANY, Et Al.,
Appellants,

v.

CITY OF CHICAGO, Et Al.,
Appellees,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

BRIEF FOR APPELLANTS IN OPPOSITION TO MOTION TO AFFIRM

The United States and the Interstate Commerce Commission have filed a motion that the related appeal in No. 1047 be dismissed and that the judgment of the District Court be affirmed in No. 1048. This brief is filed by appellants in No. 1048* in opposition to the motion to affirm.

The judgment of the District Court is opposed for different reasons by parties on both sides of the rate controversy before the Commission. In the District Court, the appellants in No. 1047 were the plaintiffs, the United States and the Commission were defendants, and these appellants (No. 1048) were intervening defendants. The United States

* Illinois Central Railroad Company, Chicago & Eastern Railroad Company, Gulf, Mobile and Ohio Railroad Company, Norfolk and Western Railroad Company, Allied Mills, Inc., Central Soya Co., Inc., Lauhoff Grain Company, Ralston Purina Company, and New Orleans Traffic and Transportation Bureau.

took a neutral position, and the Commission and these apellants defended the Commission's orders. These appellants in their Jurisdictional Statement contend that the District Court erred in setting aside the orders of the Commission, and in remanding the case for further proceeding with improper instructions.

Movants' argument (page 6) misconceives the position of these appellants in their Jurisdictional Statement. The questions raised by these appellants are not merely "technical," as movants assert, but are substantial contentions which merit the consideration of this Court. Furthermore, these appellants do not argue, as movants suggest, that the District Court's opinion and judgment "circumscribe" the further proceedings which they direct the Commission to hold; on the contrary, these appellants contend that the judgment and opinion of the District Court improperly *expand* such proceedings.

The judgment of the District Court is not one which merely remands the case to the Commission for further proceedings; instead, it is a judgment which directs that the further proceedings be consistent with the opinion filed by that Court. The District Court's opinion evinces a misconception of the nature of the case, the orders entered by the Commission, and the judicial power to remand. Notwithstanding the fact that the administrative proceeding was one arising upon complaint, the District Court in effect directed the Commission to develop evidence as to various economic and trade factors which the complainant before the Commission did not see fit to offer, and invaded the administrative province of the Commission by directing it to give consideration to such factors in passing upon the lawfulness of the involved freight rates.

CONCLUSION

These appellants submit that if the motion to dismiss in No. 1047 is denied, the motion to affirm in No. 1048 should also be denied; and that, in any event, this Court should not permit the case to be remanded to the Commission with improper directions as to further proceedings.

Respectfully submitted,

JOHN W. ADAMS
104 St. Francis Street
Mobile, Alabama 36602

WILLIAM J. O'BRIEN, JR.
JOHN H. DOERINGER
135 E. Eleventh Place
Chicago, Illinois 60605

JAMES H. DURKIN
646 Chicago Road
Chicago Heights, Illinois 60411

CARL B. STERZING, JR.
8 N. Jefferson Street
Roanoke, Virginia 24011
Attorneys for Appellants Illinois Central Railroad Company, et al.

FRANKLIN C. GAGEN
110 North Wacker Drive
Chicago, Illinois 60606

BRYCE L. HAMILTON
1400 First National Bank Bldg.
Chicago, Illinois 60603
Attorneys for Appellants Allied Mills, Inc., et al.

LOUIS A. SCHWARTZ
2926 International Trade Mart
No. 2 Canal Street
New Orleans, Louisiana 70130
Attorney for Appellant New Orleans Traffic and Transportation Bureau

Of Counsel:

WINSTON, STRAWN, SMITH & PATTERSON
1400 First National Bank Bldg.
Chicago, Illinois 60603